

EXHIBIT 5

Declaration of Sarah Adelman

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

STATE OF KANSAS, *et al.*,

Plaintiffs,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

Civil Action No. 1:24-cv-150-DMT-CRH
Judge Daniel M. Traynor

DECLARATION OF SARAH ADELMAN

I, Sarah Adelman, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

1. I am the Commissioner of the New Jersey Department of Human Services (“DHS”). I have been employed as Commissioner since January 2021.
2. I submit this Declaration in support of the Final Rule, 89 Fed. Reg. 39,392, issued by the U.S. Department of Health and Human Services and Center for Medicaid Services permitting Deferred Action Childhood Arrivals (“DACA”) recipients to enroll in a qualifying health plan through an exchange pursuant to the Affordable Care Act (“ACA”). I have compiled the information in the statements set forth below through personal knowledge, through DHS personnel who have assisted me in gathering this information from our agency, and on the basis of documents that have been provided to and/or reviewed by me. I have also familiarized myself with the Final Rule in order to understand its immediate impact on DHS and New Jersey.

The New Jersey Department of Human Services

3. DHS is New Jersey's largest agency, serving approximately 2.1 million New Jersey residents. DHS serves many people in New Jersey including but not limited to older residents, individuals, and families with low incomes; people with developmental disabilities, or late-onset disabilities; people who are blind, visually impaired, deaf, hard of hearing, or deaf-blind; parents needing child care services, child support and/or healthcare for children; people who are dealing with addiction and mental health issues; and families facing catastrophic medical expenses for their children. Through DHS's eight divisions, the agency provides numerous programs and services designed to give eligible individuals and families assistance with economic and health challenges. These programs include publicly funded health insurance through NJ FamilyCare, which includes New Jersey's Children's Health Insurance Program, Medicaid, and Medicaid expansion populations. New Jersey residents of any age who qualify for NJ FamilyCare may be eligible for free or low-cost healthcare coverage that covers doctor visits, prescriptions, vision, dental care, mental health and substance use services, and hospitalization.
4. The Office of New Americans within DHS supports new Americans through outreach and education, and works on priorities to build trust, improve access to social services, workforce development and employment services, and assists with legal services for immigrants. The Office of New Americans seeks to increase accessibility to State programs available to new Americans, including those who speak languages other than English. The Office of New Americans also serves as a resource for other state agencies to amplify education and outreach on state initiatives and programs to ensure they reach all new American communities in our state.

5. The Final Rule states that DACA recipients are, on average, “younger than the general [ACA] Exchange population.” 89 Fed. Reg. 39396, 39400. This is true in New Jersey, where the average age of DACA recipients is 33, but the average age of the general population is 40.

NJ FamilyCare and Related Healthcare Programs

NJ FamilyCare

6. NJ FamilyCare is a federal- and state-funded health insurance program created to help qualified New Jersey residents of any age access affordable health insurance.
7. NJ FamilyCare includes, but is not limited to, the following programs funded by both the federal government and the State: Medicaid and the Children’s Health Insurance Program (“CHIP”).
8. With limited exceptions, DACA recipients are generally not eligible for Medicaid or CHIP, see 89 Fed. Reg. 39,393; 42 C.F.R. 435 (Medicaid eligibility); 42 C.F.R. 457 (CHIP eligibility); N.J.A.C. 10:78 (NJ FamilyCare eligibility), and so they face barriers in accessing these components of NJ FamilyCare.
9. To help address these barriers, New Jersey operates programs specifically directed at individuals who cannot access these components of NJ FamilyCare, including the Supplemental Prenatal and Contraceptive Program and the Medical Emergency Payment Program, among others.

New Jersey Supplemental Prenatal and Contraceptive Program

10. New Jersey’s Supplemental Prenatal and Contraceptive Program (“NJSPCP”) is operated by DHS and is a limited-benefit program. It provides prenatal and family-planning services to women who do not qualify for NJ FamilyCare due to their immigration status. However,

NJSPCP does not provide complete healthcare coverage, such as hospital visits or labor and delivery.

11. Emergency medical services for pregnant women who do not qualify for NJ FamilyCare due to immigration status are covered through the Medical Emergency Payment Program, which is discussed below.
12. NJSPCP covers outpatient prenatal and family planning services for women including, but not limited to: prenatal care, prenatal-related services, birth control, pregnancy tests, family-planning counseling, and family-planning lab tests.
13. To be eligible for NJSPCP, a patient must meet all criteria below, N.J.A.C. 10:72-3.10:
 - a. Women age 19-64;
 - b. New Jersey resident;
 - c. Income-eligibility criteria under NJ FamilyCare; and
 - d. Ineligible for NJ FamilyCare due to immigration status.
14. If they meet the above criteria, DACA recipients may be eligible for NJSPCP.
15. DACA recipients have accessed health care services through NJSPCP.
16. Patients can apply for NJSPCP by seeing a medical provider at a hospital, outpatient clinic, Federally Qualified Health Center, or Family Planning Center. If the provider participates in the NJSPCP program, they will provide application assistance. Patients can receive NJSPCP benefits at any hospital, clinic, Federally Qualified Health Center, or Family Planning Center that accepts fee-for-service Medicaid. Patients can also have their prescriptions filled at most pharmacies. NJSPCP coverage terminates at the end of each fiscal year and eligible individuals must reapply after July 1st of each year to renew their benefits.

17. If a patient is eligible for NJSPCP, then the services covered through the program are of no cost to the patient. The State pays providers directly for the covered services—the provider submits claims to the State to be reimbursed by fee-for-service Medicaid payment.
18. NJSPCP is funded exclusively by the State of New Jersey.
19. In Federal Fiscal Year 2024, the period from October 2023 through September 2024, New Jersey spent \$36 million on the NJSPCP program.

Medical Emergency Payment Program

20. New Jersey's Medical Emergency Payment Program covers emergency services, including labor and delivery, for New Jersey residents age 19 and older who do not qualify for NJ FamilyCare due to immigration status. The Medical Emergency Payment Program does not provide complete healthcare coverage, but only treatment that is provided at an acute care hospital for an emergency medical condition and labor and delivery of a baby in any setting. Regarding treatment for an emergency medical condition, the condition must have severe symptoms (including severe pain) that would place the patient's health in serious danger, seriously damage the patient's bodily functions, or seriously damage a body part or organ.
21. Under 42 C.F.R. 435.406, New Jersey residents are eligible for the Medical Emergency Payment Program, without regard to immigration status. Therefore, individuals may access the Medical Emergency Payment Program even if, for example, they are undocumented or do not qualify for NJ FamilyCare due to immigration status.
22. The Medical Emergency Payment Program is also subject to income-eligibility criteria based on the federal poverty level. *See* 42 U.S.C. § 1396b(v) (allowing states to pay for emergency medical services for individuals who do not otherwise meet the immigration requirements for Medicaid).

23. Given these criteria, DACA recipients may be eligible for the Medical Emergency Payment Program.
24. Pregnant DACA recipients who rely on NJSPCP benefits would need to access the Medical Emergency Payment Program to obtain coverage for labor and delivery services.
25. During Federal Fiscal Year 2024, New Jersey spent over \$67 million on the Medical Emergency Payment Program.

Impacts of Health Insurance on Public Health

26. Increased access to health insurance provides significant benefits to public health. The expansion of access to health insurance under New Jersey's Cover All Kids initiative is an illustrative example.
27. In January 2023, through the Cover All Kids initiative, New Jersey expanded health insurance coverage to income-eligible children whose immigration status would otherwise prevent them from qualifying for NJ FamilyCare.
28. There are currently over 44,000 children accessing NJ FamilyCare coverage through this expansion.
29. Cover All Kids is funded exclusively by the State. In Federal Fiscal Year 2024, New Jersey spent over \$134 million on the Cover All Kids program.
30. Access to healthcare, particularly to primary care, makes children healthier and communities stronger, and it is a fiscally responsible investment in the future of New Jersey children. Through Cover All Kids, income eligible children, regardless of immigration status, can access the same NJ FamilyCare coverage as any other child within the State.
31. The increased enrollment of immigrant children in the State expansion of NJ FamilyCare via the Cover All Kids initiative has had a positive impact on public health in the state. Children

with access to health insurance are more likely to receive preventive care services and families are not left with medical bills that they are unable to pay.

32. An increase in insurance coverage for immigrant children also results in decreased emergency room visits for preventable illness, (because children are being seen before treatable medical issues become an emergency).

33. The Final Rule—which expands access to affordable health insurance coverage on the state insurance marketplace to DACA recipients, *see* 89 Fed. Reg. 39392—likewise benefits New Jersey. With increased access to affordable health insurance via the state insurance marketplace, DACA recipients are more likely to seek preventive care and avoid costly emergency room visits.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 15th day of January, 2025, in Trenton, New Jersey.

A handwritten signature in black ink, reading "Sarah Adelman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sarah Adelman
Commissioner
New Jersey Department of Human Services